

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: GENERIC PHARMACEUTICALS
PRICING ANTITRUST LITIGATION

MDL 2724
16-MD-2724

THIS DOCUMENT RELATES TO:

Humana Inc. v. Actavis Elizabeth, LLC et al.

HON. CYNTHIA M. RUFÉ

Individual Case No. 2:18-cv-03299-
CMR

**JOINT STIPULATION TO STRIKE PORTIONS OF HUMANA'S
SECOND AMENDED COMPLAINT AND DISMISS THE PRAVASTATIN
CLAIMS AS TO DEFENDANTS MYLAN N.V., MYLAN
PHARMACEUTICALS, INC., MYLAN INC., AND UDL LABORATORIES**

WHEREAS, Plaintiff, Humana Inc. ("Humana") filed an initial Complaint in the above-captioned matter on August 3, 2018, which is centralized for pretrial proceedings as part of *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, Case No. 16-md-02724-CMR, MDL No. 2724;

WHEREAS, Humana filed an Amended Complaint on December 21, 2018, which alleged that Defendants Mylan N.V., Mylan Pharmaceuticals, Inc., Mylan Inc., and UDL Laboratories Inc. (collectively "Mylan") conspired to fix the prices of generic pravastatin in violation of Section 1 of the Sherman Act (Count LXXXI) and certain state antitrust and consumer protection laws (Count LXXXII and LXXXIII), for unjust enrichment (LXXXIV), and for declaratory and injunctive relief under Section 16 of the Clayton Act (LXXXV);

WHEREAS, on February 21, 2019, pursuant to an agreement between Humana and Mylan, Humana filed a Notice of Voluntary Dismissal Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) to dismiss Counts LXXXI – LXXXV of the Amended Complaint against Mylan without prejudice;

WHEREAS, the parties wish to conform Humana's Second Amended Complaint, filed April 1, 2019, to reflect the February 21, 2019 Notice of Dismissal without the need at this time to file a Third Amended Complaint.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the undersigned counsel, on behalf of their respective clients, as follows:

1. Counts LXXXI – LXXXV of the Amended Complaint against Mylan are voluntarily dismissed without prejudice to Humana's right to later file a motion for leave to amend its complaint to re-allege pravastatin claims against Mylan, and with each party bearing its own costs, expenses and attorneys' fees. This stipulation of dismissal is not to be construed as an adjudication on the merits.

2. The pravastatin allegations identified below shall be stricken as to Mylan from Humana's April 1, 2019 Second Amended Complaint as follows:


| Paragraph | Allegation (edits in red) |
|-----------|---|
| 68 | Defendant Mylan Pharmaceuticals, Inc. is a West Virginia corporation with its principal place of business in Morgantown, West Virginia. During the relevant time period, Mylan Pharmaceuticals Inc., participated in the alleged conspiracy marketed and sold one or more of the Subject Drugs throughout the United States, and was a leading manufacturer of Amitriptyline, Benazepril, Clomipramine, Digoxin, Divalproex, Doxycycline, Levothyroxine, Pravastatin , Propranolol, and Verapamil. |
| 106 | Defendants Actavis, Apotex, Dr. Reddy's, Glenmark, Lupin, Mylan , Teva, and Zydus shall collectively be referred to as the "Pravastatin Defendants." |
| 634 | Pravastatin Defendants Actavis, Apotex, Dr. Reddy's, Glenmark, Lupin, Mylan , Teva, and Zydus dominate the market for Pravastatin. |
| 640 | Although WAC data is not available for Actavis, Dr. Reddy's, or Glenmark, or Mylan , upon information and belief, they implemented virtually identical price increases at virtually the same time in their generic Pravastatin products. |
| 641 | Prices continued to increase after August of 2013. In the October 2014 letters Senator Sanders and Representative Cummings sent to generic manufacturers as part of their investigation, they outlined the price increase Pravastatin saw between October 2013 and April 2014. The sent letters to Defendants Mylan , Dr. |

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| | Reddy's, Apotex, Teva, and Zydus, and depicted the following price increases during that six-month period: |
| Count LXXXI | <u>VIOLATION OF SECTION 1 OF THE SHERMAN ACT (PRAVASTATIN)</u> (As to Actavis, Apotex, Dr. Reddy's, Glenmark, Lupin, Mylan , Teva, and Zydus) |
| Count LXXXII | <u>FOR CONSPIRACY AND COMBINATION IN RESTRAINT OF TRADE UNDER STATE LAWS (PRAVASTATIN)</u> (As to Actavis, Apotex, Dr. Reddy's, Glenmark, Lupin, Mylan , Teva, and Zydus) |
| Count LXXXIII | <u>UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER STATE LAW (PRAVASTATIN)</u> (As to Actavis, Apotex, Dr. Reddy's, Glenmark, Lupin, Mylan , Teva, and Zydus) |
| Count LXXXIV | <u>UNJUST ENRICHMENT UNDER STATE LAW (PRAVASTATIN)</u> (As to Actavis, Apotex, Dr. Reddy's, Glenmark, Lupin, Mylan , Teva, and Zydus) |
| Count LXXXV | <u>DECLARATORY AND INJUNCTIVE RELIEF UNDER SECTION 16 OF THE CLAYTON ACT FOR VIOLATIONS OF SECTIONS 1 AND 2 OF THE SHERMAN ACT (PRAVASTATIN)</u> (As to Actavis, Apotex, Dr. Reddy's, Glenmark, Lupin, Mylan , Teva, and Zydus) |

3. If Humana files a Third Amended Complaint after the date of this Stipulation for any reason, it shall amend the pravastatin allegations as to Mylan consistent with Paragraph 2 above.

IT IS SO STIPULATED.

APPROVED AND SO ORDERED
this 28th day of May, 2019


CYNTHIA M. RUFÉ
UNITED STATES DISTRICT JUDGE

Dated: May 20, 2019

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